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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARISA JEWELLYN ACOSTA,

Defendant and Appellant.

F064305

(Super. Ct. No. 11CM8797)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Donna Tarter, Judge.

Maureen M. Bodo, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Peña, J.

A jury convicted appellant, Marisa Jewellyn Acosta, in case No. 11CM8797 of attempted child endangerment (Pen. Code, §§ 664/273a, subd. (a)).¹ In a separate proceeding, Acosta admitted a prior prison term enhancement (§ 667.5, subd. (b)) and allegations that she had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On appeal, Acosta contends she is entitled to additional presentence conduct credit. We affirm.

DISCUSSION²

Acosta contends she is entitled, on equal protection grounds, to enhanced presentence conduct credit pursuant to the amendment of section 4019 that became effective on October 1, 2011, for time she spent in presentence custody on or after that date. We disagree.

Acosta committed her attempted child endangerment offenses on June 11, 2011. She was arrested on August 30, 2011. On December 19, 2011, the court sentenced her to an aggregate seven-year term: the upper term of three years, doubled to six years because of Acosta's prior strike conviction, and a one-year prior prison term enhancement. The court also awarded Acosta 168 days of presentence custody credit consisting of 112 days of presentence actual custody credit and 56 days of presentence conduct credit.

At the time Acosta committed her current offense, section 2933 allowed a prisoner sentenced to state prison under section 1170 to have one day deducted from his or her sentence for every day he or she served in a county jail from the date of arrest until state prison credits became applicable, except that section 4019, and not section 2933, applied

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² The underlying facts pertaining to Acosta's conviction are omitted because they are not germane to the issue she raises.

to a prisoner with a prior conviction for a violent or serious felony. (§ 2933, former subd. (e)(1), (3), as amended by Stats. 2010, ch. 426, § 1, p. 2087, eff. Sept. 28, 2010.) Under section 4019 as it then read, prisoners were entitled to presentence credits in an amount such that six days were deemed to have been served for every four days spent in actual custody. (§ 4019, former subds. (b), (c) & (f), as amended by Stats. 2010, ch. 426, § 2, p. 2088, eff. Sept. 28, 2010.) Acosta was awarded credits calculated by means of the former section 4019 formula for her entire period of presentence incarceration.

By the time Acosta was sentenced, section 2933 had been amended to delete references to section 4019 and calculation of presentence credits. (Stats. 2011–2012, 1st Ex. Sess., ch. 12, § 16, p. 5963, eff. Sept. 21, 2011, operative Oct. 1, 2011.) Section 4019 was also amended. Subdivision (f) of the statute now provides: “It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.” (§ 4019, subd. (f), as amended by Stats. 2011, ch. 15, § 482, p. 498, eff. Apr. 4, 2011, operative Oct. 1, 2011 & Stats. 2011, ch. 39, § 53, p. 1731, eff. June 30, 2011, operative Oct. 1, 2011.) Thus, section 4019 now provides for day-for-day credits for defendants—even those with prior strike convictions—who serve presentence time in county jail. The only exceptions are defendants with current violent felony or murder convictions (§§ 2933.1, 2933.2; see *People v. Nunez* (2008) 167 Cal.App.4th 761, 765), which defendant does not have (see § 667.5, subd. (c)).

Acosta acknowledges that the version of section 4019 that went into effect on October 1, 2011, specifically states that it applies to offenses committed on or after October 1, 2011. Nevertheless, she contends that principles of equal protection entitle her to the enhanced conduct credits provided by that amendment for the 80 days she spent in custody from October 1, 2011, through December 19, 2011. Thus, according to Acosta, she is entitled to 40 days of presentence custody credit for that period of time, or

an additional 20 days of presentence conduct credit over what the trial court awarded her.³ We disagree.

In *People v. Ellis* (2012) 207 Cal.App.4th 1546 (*Ellis*), this court rejected the defendant's identical claim that even though he committed his offense prior to October 1, 2011, he was entitled, on equal protection grounds, to enhanced conduct credit for time he spent in presentence custody on or after that date. (*Id.* at pp. 1552-1553.) *Ellis* is dispositive of Acosta's claim of entitlement to enhanced credits. The trial court properly calculated Acosta's presentence credits.

DISPOSITION

The judgment is affirmed.

³ According to Acosta, the trial court should have awarded her a total of 208 days of presentence custody credit consisting of 48 days of presentence custody credit for her custody time prior to October 1, 2011, (32 days actual + 16 days conduct = 48 days) and 160 days of presentence custody credit for her custody time on or after that date (80 days actual + 80 days conduct = 160 days; 160 days + 48 days = 208 days).